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N.J. BOARD OF DENTISTRY  
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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF DENTISTRY

IN THE MATTER OF	:	Administrative Action
	:	
TRACY GINSBURG, D.M.D.	:	FINAL CONSENT ORDER
License No. 22DI 02066600	:	
	:	
LICENSED TO PRACTICE DENTISTRY	:	
IN THE STATE OF NEW JERSEY	:	

The New Jersey State Board of Dentistry ("Board") reviewed information regarding the dental practice of Tracy Ginsburg, D.M.D. ("Dr. Ginsburg" or "Respondent"), and in particular the treatment of patient M.B. on November 8, 2012.

Respondent received her parenteral conscious sedation ("PCS") permit in 1999 from the Board; however, she had failed to renew it in 2009 and did not have a current PCS permit at the time of M.B.'s November 8, 2012 appointment.

On November 8, 2012, Respondent treated M.B., a 63 year-old patient, and administered PCS. During the office visit, M.B. became diaphoretic. He was taken by an ambulance to a hospital where he died three days later. Respondent provided an incident

report as required by N.J.A.C. 13:30-8.8, however, it failed to note that she had administered PCS to M.B. on November 8, 2012. Respondent also provided a subsequent narrative in which she described her treatment of the patient, including the administration of PCS.

Respondent, along with counsel, appeared before the Board on March 20, 2013 for an Investigative Inquiry.

On August 14, 2013, Respondent agreed to voluntarily surrender her PCS permit and agreed to restrictions on her ability to prescribe, administer or dispense sedative hypnotics until she completed an 80 hour PCS Board approved class and further Order of the Board. A Consent Order was filed with the Board on that day.

Subsequent to the Order, Respondent completed the 80 hour PCS Board approved class and applied for reinstatement of her PCS permit. Respondent again appeared before the Board on December 4, 2013, to discuss her request for reinstatement of the PCS permit.

On April 2, 2014, the Board, following its review of the record, determined that Respondent may resume administering PCS to patients with a classification of ASA 1 only for a finite period of time. Respondent may prescribe, administer, or dispense sedative hypnotics without restriction. However, Respondent must provide to the Board on a monthly basis a copy of the patient records including the medical history, copy of the prescription issued (if applicable), a narrative regarding treatment rendered, and the

rationale for providing the medication, and patient disposition upon discharge for all patients for whom she administers PCS and/or prescribes, administers, or dispenses sedative hypnotics.

Based on its review of the entire matter, including the patient record, Respondent's testimony on March 20, 2013 and December 4, 2013, and an expert report procured in this case, it appears to the Board that Respondent's assessment of her patient M.B. for the appropriateness of PCS and surgery constituted repeated acts of negligence in violation of N.J.S.A. 45:1-21(d).

In addition, Respondent's use of PCS during the time when her permit was not active constitutes a failure to comply with the provisions of a regulation administered by the Board, specifically N.J.A.C. 13:30-8.2(c), and is in violation of N.J.S.A. 45:1-21(h). Her conduct in using PCS though her permit had lapsed also constitutes misrepresentation in violation of N.J.S.A. 45:1-21(b) and professional misconduct in violation of N.J.S.A. 45:1-21(e).

Respondent's failure to utilize her training and office resources during an emergency constitute repeated acts of negligence in violation of N.J.S.A. 45:1-21(d).

The Board also found that Respondent's record-keeping deviated from the standard of care since M.B.'s patient record was not comprehensive. Her patient record of M.B. did not include pre-operative vital signs, pulse oximetry data, and lacked notes regarding her follow-up with M.B.'s other treating physician.

The Board also reviewed Respondent's handwritten notes of M.B.'s November 8, 2012 visit in the patient record supplied to the Board in advance of her March 20, 2013 appearance and determined that the notes do not reflect that she administered sedation at the visit. However, the administration of PCS is contained in the typed transcription that accompanied the patient record. The handwritten notes of M.B.'s November 8, 2012 visit in the patient record supplied through her attorney, on or around July 17, 2013, do include that Respondent administered conscious sedation. There is no notation in this record indicating when the additional information was subsequently written into the record. While Respondent submitted an incident form to the Board, she failed to include that she had administered PCS to M.B.

Respondent's failure to maintain an accurate and detailed patient record constitutes repeated acts of negligence in violation of N.J.S.A. 45:1-21(d), and professional misconduct in violation of N.J.S.A. 45:1-21(e). Her failure to comply with the provisions of a regulation administered by the Board, specifically N.J.A.C. 13:30-8.7, is also a violation of N.J.S.A. 45:1-21(h).

Respondent, through counsel, being desirous to resolve the proceeding without the need for further formal proceedings, has agreed to the entry of this Order.

The Board finds the entry of this Consent Order to be adequately protective of the public health, safety, and welfare.

THEREFORE, IT IS ON THIS                      DAY OF                      , 2015,

HEREBY ORDERED AND AGREED THAT:

1.            Respondent, Tracy Ginsburg's, D.M.D., license to practice Dentistry in the State of New Jersey is suspended for one year. The first one (1) month shall be served as an active suspension, with the remaining eleven (11) months stayed and served as a period of probation conditioned upon Respondent's compliance with the provisions enumerated in this Order. The period of active suspension will be tolled for any length of time that Respondent practices in another jurisdiction. Respondent shall serve the period of active suspension from August 11, 2015 through September 10, 2015.

2.            Respondent is hereby assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$15,000.00. Specifically, the Board notes that Dr. Ginsburg is assessed a \$5,000.00 penalty for her failure to properly assess M.B. for the appropriateness of PCS and surgery. Respondent is assessed a \$5,000.00 penalty for her failure to have maintained a current PCS permit at the time of her treatment of M.B. Respondent is assessed a \$5,000.00 penalty for failing to include on the incident form reported to the Board that PCS had been used on M.B.

3.            Respondent shall pay costs in the amount of \$12,804.25. The costs include \$1,154.25 for the transcripts of the Investigative Inquiries when she appeared before the Board,

\$1,650.00 for the expert report and \$10,000.00 in attorney fees.

4. Payment of the civil penalties and costs totaling \$27,804.25 shall be submitted by bank check, money order, certified check or wire transfer. Respondent shall be permitted to make monthly payments of \$1,158.51 for the next twenty four months. The payment must be made payable to the State of New Jersey and shall be sent to Jonathan Eisenmenger, Executive Director, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101. If a form of payment is presented other than the approved forms noted above, it will be rejected and returned to the party making payment with a reminder regarding the forms of approved payment. Respondent's first payment is due no later than thirty (30) days from entry of this Consent Order.

5. Failure to remit any payment pursuant to this Order will result in the filing of a certification of debt and shall constitute a violation of this Consent Order.

6. Respondent shall complete seven (7) hours of a Board-approved record-keeping course within three (3) months of entry of this Order. Successful completion means that all sessions were attended, and assignments were properly and appropriately completed and a passing grade was achieved which was unconditional and without reservation. [The parties note that Respondent already satisfactorily completed a Board approved course in PCS, which included a record-keeping component and therefore, Respondent does

not need to complete an additional record-keeping course.]

7. Respondent may resume administering PCS to patients with a classification of ASA 1 retroactive to April 2, 2014. Respondent may prescribe, administer, or dispense sedative hypnotics without restriction. However, Respondent must provide to the Board on a monthly basis a copy of the patient records including the medical history, copy of the prescription issued (if applicable), a narrative regarding treatment rendered, and the rationale for providing the medication, and patient disposition upon discharge for all patients for whom she administers PCS and/or prescribes, administers, or dispenses sedative hypnotics. At the conclusion of 15 months retroactive to April 2, 2014, and assuming no other concerns are identified by the Board, the restrictions on Respondent's ability to administer PCS will be removed. In addition, at the conclusion of the 15 month period retroactive to April 2, 2014, and assuming no other concerns are identified by the Board, Respondent will be discharged from submitting to the Board on a monthly basis a copy of the patient records and supporting materials as described above.

8. Dr. Ginsburg shall forward her dental license to her attorney, Debra Marcus, Esq., prior to August 11, 2015, who will hold the license in escrow until the completion of Dr. Ginsburg's active suspension.

9. Respondent shall comply with the attached directives for

dentists who have been disciplined by the Board, which are attached to this Order and incorporated herein by reference.

10. Failure to comply with any of the terms of this Consent Order may result in immediate disciplinary action, including an application for suspension of license on short notice.

11. The parties hereby stipulate that entry of this Order is without prejudice to further action, by this Board or the Acting Attorney General, the Drug Control Unit, the Director of the Division of Consumer Affairs or other law enforcement entities resulting from Respondent's conduct prior to the entry of this Order.

NEW JERSEY STATE BOARD OF DENTISTRY

By:

Shirley Bizenz, RDH, MS  
Shirley Bizenz, RDH, MS  
~~Acting~~ Board President

I have read and understand this Final Consent Order and agree to be bound by its terms. I consent to the entry of this Order.

Tracy Ginsburg, D.M.D.

6-12-15  
Date

Consented to as to form and entry.

Debra Marcus, Esq.  
Debra Marcus, Esq.  
Attorney for Dr. Ginsburg

6-15-15  
Date



**DIRECTIVES APPLICABLE TO ANY DENTISTRY BOARD LICENSEE  
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license has been accepted by the Board, shall conduct him/herself as follows:

**1. Document Return and Agency Notification**

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate, and if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances Registration. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of dentistry in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee of this Board provides health care services. Unless otherwise ordered by the Board, the disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from all prescription blanks and pads, professional listings, telephone directories, professional stationery, or billings. If the licensee's name

is utilized in a group practice title, it shall be deleted.

Prescription pads bearing the licensee's name shall be destroyed. A destruction report form shall be obtained from the Office of Drug Control (973-504-6558) and filed with that office. If no other licensee is providing services at the practice location, all medications must be removed and returned to the manufacturer (if possible), or destroyed or safeguarded. In situations where the licensee has been suspended for a period of less than one year, prescription pads and medications must be secured in a locked place for safekeeping.

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice, and shall be required to comply with the requirements to divest him/herself of all financial interest in the professional practice pursuant to Board regulations contained in N.J.A.C. 13:30-8.21. Such divestiture shall occur within 90 days following the entry of the Board Order. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the New Jersey Department of Treasury, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Patient Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to patient records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her patient record or asks that the record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

## **6. Reports of Reimbursement**

A disciplined practitioner shall promptly report to the Board his/her compliance with each directive requiring monies to be reimbursed to patients to other parties or third party payors or to any Court.

## **7. Report of Changes of Address**

A disciplined practitioner shall notify the Board office in writing within ten (10) days of change of address.

**NOTICE OF REPORTING PRACTICES OF BOARD**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Dentistry are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a dentist:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the American Association of Dental Examiners, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board. In addition, the same description may appear on the Internet Website of the Division of Consumer Affairs.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.